

Before the
Federal Communications Commission
Washington, D.C. 20554

2001 MAR 15 A 11: 58

In the Matter of)	
)	
Request for Review of the)	RECEIVED
Decision of the)	
Universal Service Administrator by)	
)	
Cheney Public Schools)	File No. SLD-142969
Cheney, Washington)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45✓
Universal Service)	
)	
Changes to the Board of Directors of the)	CC Docket No. 97-21
National Exchange Carrier Association, Inc.)	

ORDER

Adopted: March 5, 2001

Released: March 6, 2001

By the Common Carrier Bureau:

1. The Common Carrier Bureau (Bureau) has under consideration a Request for Review filed by the Cheney Public Schools (Cheney), Cheney, Washington on May 16, 2000.¹ Cheney seeks review of a funding commitment decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator) pursuant to a funding request for internal connections.² For the reasons set forth below, we deny Cheney's Request for Review.

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections.³ In order to receive discounts on eligible services, the Commission's rules require that the applicant submit to the Administrator a completed FCC Form 470, in which the applicant sets forth the

¹ Request for Review by Cheney School District No. 360, filed May 16, 2000 (Request for Review).

² See Letter from Schools and Libraries Division, Universal Service Administrative Company, to Chris Wickund, Cheney Public School District No. 360, issued October 12, 1999 (Funding Commitment Decision Letter); Letter from Schools and Libraries Division, Universal Service Administrative Company, to David Sackville-West, Cheney Public Schools, issued April 18, 2000 (Administrator's Decision on Appeal).

³ 47 C.F.R. §§ 54.502, 54.503.

school's technological needs and the services for which it seeks discounts.⁴ Once the school has complied with the Commission's competitive bidding requirements and signed a contract for eligible services, it must file an FCC Form 471 application to notify the Administrator of the services that have been ordered, the carrier with whom the school has signed the contract, and an estimate of funds needed to cover the discounts to be given for eligible services.⁵ This information is generally provided in Block 5 of FCC Form 471. Among other information, Block 5 requires the applicant to indicate services requested, the name of the service provider, the type of service or product for which support is sought, and the estimated total annual pre-discount cost. Using information provided by the applicant in its FCC Form 471, the Administrator determines the amount of discounts for which the school is eligible.

3. The instant appeal arises from Cheney's application for discounted internal connections for the 1999-2000 funding year, Funding Request Number (FRN) 227849. In its FCC Form 471, filed on April 2, 1999, Cheney sought support in a single funding request for telecommunications services or products that it valued at \$296,305. SLD denied Cheney's request on the grounds that 30 percent or more of Cheney's funding request was for ineligible telephone sets.⁶ Cheney filed an appeal with SLD on October 28, 1999, claiming that, when its estimate was submitted on its Form 471, telephone sets were eligible as they were not excluded on the Schools and Libraries Eligibility List.⁷ In response, SLD affirmed its decision, stating that the funding request included ineligible services that resulted in the denial of the entire amount of the funding request. SLD stated that telephone sets are unquestionably ineligible products.⁸

4. Cheney filed the instant appeal with the Commission on May 16, 2000. In this

⁴ 47 C.F.R. § 54.504 (b)(1), (b)(3).

⁵ 47 C.F.R. § 54.504(c).

⁶ See Funding Commitment Decision Letter at 5. The "30 percent policy" is not a Commission rule, but rather is an SLD operating procedure established pursuant to FCC policy. See *Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service*, CC Docket Nos. 97-21 and 96-45, Third Report and Order in CC Docket No. 97-21 and Fourth Order on Reconsideration in CC Docket No. 97-21 and Eighth Order on Reconsideration in CC Docket No. 96-45, 13 FCC Rcd 25058 (1998). This operating procedure, used during SLD's application review process, enables SLD to efficiently process requests for funding for services that are eligible for discounts but that also include some ineligible components. If 30 percent or less of the request is for funding of ineligible services, SLD normally will consider the application and issue a funding commitment for the eligible services. If more than 30 percent of the request is for funding of ineligible services, SLD will deny the funding request in its entirety. The 30 percent policy allows SLD to efficiently process requests for funding that contain only a small amount of ineligible services without expending significant fund resources working with applicants that are requesting funding of ineligible services.

⁷ See Letter from David Sackville-West, Cheney School District No. 360, to Schools and Libraries Division, Universal Service Administrative Company, filed October 28, 1999. The Eligibility List provides guidance on the eligibility of various products and services and is available on the SLD Website at www.sl.universalservice.org/reference/eligible.asp.

⁸ See Administrator's Decision on Appeal.

appeal, Cheney states that the funding request was submitted in reliance on the information found in SLD's official website. Cheney states that on April 1, 1999, it obtained the most current public version of the Eligibility List off the website. Cheney states that this publication did not state that telephone sets are not eligible for the funding program.⁹ Cheney claims that if it had not included the telephone sets in its original submission, its entire funding request would have been approved.¹⁰ Cheney requests that the district receive a funding commitment based on the original amount requested less the cost of the telephone sets.¹¹

5. We have reviewed Cheney's appeal and conclude that Cheney has not shown that its request for discounts on internal connections was improperly denied. The program's rules state that universal service funds support only eligible services.¹² In the *Universal Service Order*, the Commission expressly denied support for the purchase of equipment that is not needed to transport information to individual classroom.¹³ Moreover, in a *Public Notice* issued June 11, 1998, the Bureau emphasized that no universal service funds will be provided for telephone sets.¹⁴ The instructions for the FCC Form 471 clearly state: "YOU MAY NOT SEEK SUPPORT ON THIS FORM FOR INELIGIBLE SERVICES."¹⁵ The instructions further clarify that "[w]hile you may contract with the same service provider for both eligible and ineligible services, your contract or purchase agreement must clearly break out costs for eligible services from those for ineligible services."¹⁶ The instructions direct applicants to SLD's website for additional information. The fact that SLD did not specifically list a particular product as ineligible on its Eligibility List, however, does not automatically render that product eligible for support. SLD's Eligibility List is a guide to assist program applicants; it is not intended as an exhaustive determination of eligibility or ineligibility for the entire universe of supported products and

⁹ See Request for Review at 1-2.

¹⁰ See Request for Review at 3.

¹¹ See Request for Review at 4.

¹² 47 C.F.R. § 54.504 *et seq.*

¹³ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9021-9022, para. 460 (1997) (*Universal Service Order*), as corrected by *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Errata, FCC 97-157 (rel. June 4, 1997), *affirmed in part*, *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999) (affirming *Universal Service Order* in part and reversing and remanding on unrelated grounds), *cert. denied*, *Celpage, Inc. v. FCC*, 120 S. Ct. 2212 (May 30, 2000), *cert. denied*, *AT&T Corp. v. Cincinnati Bell Tel. Co.*, 120 S. Ct. 2237 (June 5, 2000), *cert. dismissed*, *GTE Service Corp. v. FCC*, 121 S. Ct. 423 (November 2, 2000). Telephone handsets and other peripheral equipment, such as fax machines and computers in the classroom, do not provide the necessary transmission function and are not supported. *Id.*

¹⁴ "Common Carrier Bureau Reiterates Services Eligible for Discounts to Schools and Libraries," CC Docket No. 96-45, *Public Notice*, DA 98-1110, 13 FCC Rcd 16570 (Com. Car. Bur. 1998).

¹⁵ Instructions for Completing the Schools and Libraries Universal Service Services Ordered and Certification Form (FCC Form 471) (December 1998) at 15 (Form 471 Instructions).

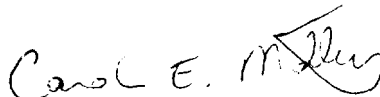
¹⁶ Form 471 Instructions at 16.

services. In light of the thousands of applications that SLD reviews and processes each funding year, it is administratively necessary to place on the applicant the responsibility of understanding all relevant program rules and procedures. We, therefore, deny Cheney's appeal.

6. Moreover, amending its FCC Form 471, as Cheney suggests, to exclude the telephone sets contravenes SLD's policy that applicants shall not be permitted to amend completed Forms 471 to remove ineligible service requests after the closure of the filing window.¹⁷ If applicants were permitted to correct their applications after SLD has denied them, it would eliminate any incentive to avoid including ineligible expenses in their funding requests. This would significantly increase the administrative burden SLD would face while carrying out its obligation to guard against the occurrence of errors and fraud. Therefore, we cannot permit Cheney to amend its FCC Form 471.

7. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the Request for Review filed May 16, 2000, by Cheney Public Schools, Cheney, Washington, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION



Carol E. Matthey
Deputy Chief, Common Carrier Bureau

¹⁷ The Commission's rules require that applicants file a completed Form 471 by the filing window deadline to be considered pursuant to the funding priorities for "in-window" applicants. 47 C.F.R. §§ 54.504(c), 54.5079(c).